

IC 4-4-10.9

Chapter 10.9. Indiana Development Finance Authority Law;
Definitions

IC 4-4-10.9-1

Application of definitions

Sec. 1. The definitions in this chapter apply throughout this chapter, IC 4-4-11, and IC 4-4-31.

As added by P.L.20-1985, SEC.1. Amended by P.L.224-2003, SEC.271.

IC 4-4-10.9-1.5

"Authority"

Sec. 1.5. "Authority" refers to the Indiana development finance authority established by IC 4-4-11.

As added by P.L.20-1988, SEC.1. Amended by P.L.11-1990, SEC.3.

IC 4-4-10.9-2

"Bonds"

Sec. 2. "Bonds" means any bonds, mortgage credit certificates, notes, debentures, interim certificates, revenue anticipation notes, warrants, or any other evidences of indebtedness of the authority and for purposes of a refunding issue, means the same types of evidences of indebtedness of a unit (as defined in IC 36-1-2-23) as well as the authority.

As added by P.L.20-1985, SEC.1. Amended by P.L.11-1990, SEC.4; P.L.24-1995, SEC.5.

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 4-4-10.9-3.1

"Child care facility"

Sec. 3.1. "Child care facility" means a:

- (1) child care center licensed under IC 12-17.2-4;
- (2) child care home licensed under IC 12-17.2-5; or
- (3) child care ministry licensed under IC 12-17.2-6.

As added by P.L.227-1999, SEC.2 and P.L.273-1999, SEC.192.

IC 4-4-10.9-3.2

"Child care facility project"

Sec. 3.2. "Child care facility project" includes the acquisition of land, site improvements, infrastructure improvements, buildings or structures, rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, working capital, furnishings, or facilities (or any combination of these):

- (1) comprising or being functionally related and subordinate to a child care facility; and
- (2) not used or to be used primarily:
 - (A) for sectarian care;
 - (B) as a place for devotional activities; or

(C) in connection with any part of the program of a:
 (i) church;
 (ii) school; or
 (iii) department of divinity;
for any religious denomination.
As added by P.L.227-1999, SEC.3 and P.L.273-1999, SEC.193.
Amended by P.L.14-2000, SEC.8.

IC 4-4-10.9-4

"Contracting party"

Sec. 4. "Contracting party" means any party to a lease, sales contract, or loan agreement other than the authority.
As added by P.L.20-1985, SEC.1. Amended by P.L.11-1990, SEC.5.

IC 4-4-10.9-5

"Cost of the project"

Sec. 5. "Cost of the project" means the cost or fair market value of construction, equipment, lands, property rights, easements, franchises, patents, financing charges, interest cost during construction, engineering and legal services, plans, specifications, surveys, cost estimates, studies, and other expenses as may be necessary or incident to the development, construction, financing, and placing in operation of an industrial development project.
As added by P.L.20-1985, SEC.1.

IC 4-4-10.9-5.5

"Covered taxes"

Sec. 5.5. "Covered taxes" refers to any of the following:
 (1) The state gross retail tax imposed under IC 6-2.5-2-1 or the use tax imposed under IC 6-2.5-3-2.
 (2) The adjusted gross income tax imposed under IC 6-3-2-1.
As added by P.L.224-2003, SEC.272.

IC 4-4-10.9-6

"Developer"

Sec. 6. "Developer" means a person who proposes to enter, or has entered, into a financing agreement with the authority for an industrial development project and who has entered into a separate agreement with some other persons for the substantial use of the facilities financed.
As added by P.L.20-1985, SEC.1. Amended by P.L.11-1990, SEC.6.

IC 4-4-10.9-6.1

"Distressed area"

Sec. 6.1. "Distressed area" means a county in which:
 (1) the average annualized unemployment rate in each of the two (2) calendar years immediately preceding the current calendar year exceeded the statewide average annualized unemployment rate for each of the same calendar years by at least two percent (2%); or

(2) the average annualized unemployment rate in the immediately preceding calendar year was at least double the statewide average annualized unemployment rate for the same period;
as determined by the department of workforce development and published in the report required by IC 4-4-31-1.
As added by P.L.224-2003, SEC.273.

IC 4-4-10.9-6.2

"Educational facility project"

Sec. 6.2. (a) "Educational facility project" includes:

(1) the acquisition of land, site improvements, infrastructure improvements, buildings, or structures, the rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, furnishings, or facilities (or any combination of these):

(A) comprising or being functionally related and subordinate to any aquaria, botanical societies, historical societies, libraries, museums, performing arts associations or societies, scientific societies, zoological societies, and independent elementary, secondary, or postsecondary schools (or any combination of these) that engages in the cultural, intellectual, scientific, educational, or artistic enrichment of the people of the state the development or expansion of which serves the purposes set forth in IC 4-4-11-2;

(B) is not used or to be used primarily for sectarian instruction or study or as a place for devotional activities; and

(C) is not used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination; or

(2) funding (including reimbursement or refinancing) by a nonprofit organization described in subsection (b) of:

(A) real property and improvements;

(B) personal property; or

(C) noncapital costs to fund a judgment, a settlement, or other cost or liability, other than an ordinary and recurring operating cost or expenditure.

(b) For purposes of subsection (a)(2), a nonprofit organization must be:

(1) qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code; and

(2) have headquarters or a primary educational or exhibit facility located on property owned by or titled in the name of the state of Indiana or an agency, a commission, or an instrumentality of the state of Indiana that serves the purposes set forth in IC 4-4-11-2.

As added by P.L.24-1995, SEC.6. Amended by P.L.4-2002, SEC.1.

IC 4-4-10.9-6.5

"Eligible export loan"

Sec. 6.5. "Eligible export loan" has the meaning set forth in IC 4-4-21.

As added by P.L.20-1988, SEC.2.

IC 4-4-10.9-7

"Equipment"

Sec. 7. "Equipment" means any capital item.

As added by P.L.20-1985, SEC.1.

IC 4-4-10.9-7.5

"Financial institution"

Sec. 7.5. "Financial institution" has the meaning set forth in IC 4-4-21.

As added by P.L.20-1988, SEC.3.

IC 4-4-10.9-8

"Financing agreement"

Sec. 8. "Financing agreement" means an agreement between the authority and a developer, user, or lender concerning the financing of, the title to, or possession of an industrial development project and that provides for payments to the authority in an amount sufficient to pay the principal of, premium, if any, and interest on bonds authorized by the authority for the financing of an industrial development project.

As added by P.L.20-1985, SEC.1. Amended by P.L.24-1987, SEC.3; P.L.11-1990, SEC.7.

IC 4-4-10.9-8.5

"Guaranteed participating loan"

Sec. 8.5. "Guaranteed participating loan" has the meaning set forth in IC 4-4-21.

As added by P.L.20-1988, SEC.4.

IC 4-4-10.9-9

"Guaranty program"

Sec. 9. "Guaranty program" means, among other things, that program of the authority described under IC 4-4-11-16 pursuant to which it guarantees certain portions of particular mortgages, security agreements, leases, or loans for working capital with funds available from its industrial development project guaranty fund.

As added by P.L.20-1985, SEC.1. Amended by P.L.11-1990, SEC.8.

IC 4-4-10.9-9.5

"High growth company with high skilled jobs"

Sec. 9.5. "High growth company with high skilled jobs" means a company that satisfies all of the following conditions:

(1) The company:

(A) had at least a fifteen percent (15%) average annual growth in company earnings during the past three (3) years;

- (B) is entering a new product or process area; or
- (C) is classified in an industry that had at least a fifteen percent (15%) average annual growth in earnings during the past three (3) years.
- (2) The company has a substantial number of employees in jobs:
 - (A) requiring post-secondary education or its equivalent; or
 - (B) that are in occupational codes classified as high skill by the Bureau of Labor Statistics, United States Department of Labor.
- (3) The company has a substantial number of employees that earn at least one hundred fifty percent (150%) of Indiana per capita personal income.

As added by P.L.227-1999, SEC.4.

IC 4-4-10.9-10

"Industrial development project guaranty fund"

Sec. 10. "Industrial development project guaranty fund" means the fund created by IC 4-4-11-16.

As added by P.L.20-1985, SEC.1.

IC 4-4-10.9-11

"Industrial development project"

Sec. 11. (a) Except as provided in subsection (b), "industrial development project" includes:

- (1) the acquisition of land, site improvements, infrastructure improvements, buildings, or structures, rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, furnishings, or facilities (or any combination of these), comprising or being functionally related and subordinate to any project (whether manufacturing, commercial, agricultural, environmental, or otherwise) the development or expansion of which serves the public purposes set forth in IC 4-4-11-2;
- (2) educational facility projects; and
- (3) child care facility projects.

(b) For purposes of the industrial development guaranty fund program, "industrial development project" includes the acquisition of land, interests in land, site improvements, infrastructure improvements (including information and high technology infrastructure (as defined in IC 4-4-8-1)), buildings, or structures, rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, furnishings, or facilities (or any combination of these), comprising or being functionally related and subordinate to any of the following:

- (1) A pollution control facility.
- (2) A manufacturing enterprise.
- (3) A business service enterprise involved in:
 - (A) computer and data processing services; or
 - (B) commercial testing services.

(4) A business enterprise the primary purpose of which is the operation of an education and permanent marketing center for manufacturers and distributors of robotic and flexible automation equipment.

(5) Any other business enterprise, if the use of the guaranty program creates a reasonable probability that the effect on Indiana employment will be creation or retention of at least fifty (50) jobs.

(6) An agricultural enterprise in which:

(A) the enterprise operates pursuant to a producer or growout agreement; and

(B) the output of the enterprise is processed predominantly in Indiana.

(7) A business enterprise that is required by a state, federal, or local regulatory agency to make capital expenditures to remedy a violation of a state or federal law or a local ordinance.

(8) A recycling market development project.

(9) A high growth company with high skilled jobs (as defined in IC 4-4-10.9-9.5).

As added by P.L.20-1985, SEC.1. Amended by P.L.10-1986, SEC.1; P.L.25-1987, SEC.1; P.L.15-1991, SEC.1; P.L.13-1993, SEC.3; P.L.24-1995, SEC.7; P.L.227-1999, SEC.5; P.L.273-1999, SEC.194; P.L.14-2000, SEC.9.

IC 4-4-10.9-11.5

"International exports"

Sec. 11.5. "International exports" has the meaning set forth in IC 4-4-21.

As added by P.L.20-1988, SEC.5.

IC 4-4-10.9-12

"Lease"

Sec. 12. "Lease" when used in connection with the multiple project program means a lease containing an option to purchase the industrial development project for a nominal sum upon payment in full, or provision therefor, of all bonds issued in connection with the industrial development project and all interest thereon and all other expenses in connection with the industrial development project, and a lease containing an option to purchase the industrial development project at any time, as provided therein, upon payment of the purchase price which shall be sufficient to pay all bonds issued in connection with the industrial development project and all interest thereon and all other expenses incurred in connection with the industrial development project, but which payment may be made in the form of one (1) or more rental payments, notes, debentures, or other secured or unsecured debt obligations of the lessee providing for timely payments, including without limitation interest thereon sufficient for such purposes and delivered to the authority or to the trustee under the indenture, if any, pursuant to which the bonds were issued.

As added by P.L.20-1985, SEC.1. Amended by P.L.11-1990, SEC.9.

IC 4-4-10.9-13

"Lender"

Sec. 13. "Lender" when used in connection with the multiple project program means any federal or state chartered bank, Federal Land Bank, production credit association, bank for cooperatives, savings association, small business investment company, or any other institution qualified within the state to originate and service loans, such as insurance companies, credit unions, and mortgage loan companies.

As added by P.L.20-1985, SEC.1. Amended by P.L.79-1998, SEC.2.

IC 4-4-10.9-14

"Loan"

Sec. 14. "Loan" means any lease, loan agreement, or sale contract as defined in this chapter.

As added by P.L.20-1985, SEC.1.

IC 4-4-10.9-15

"Loan agreement"

Sec. 15. "Loan agreement" when used in connection with the multiple project program means an agreement providing for the authority, or a lender with which the authority has contracted, to lend the proceeds derived from the issuance of bonds pursuant to IC 4-4-11 to one (1) or more contracting parties to be used to pay the cost of one (1) or more industrial development projects and providing for the repayment of such loan by the contracting party or parties, and which may provide for the loans to be secured or evidenced by one (1) or more notes, debentures, or other secured or unsecured debt obligations of the contracting party or parties, delivered to the authority or to the trustee under the indenture pursuant to which the bonds were issued.

As added by P.L.20-1985, SEC.1. Amended by P.L.20-1988, SEC.6; P.L.11-1990, SEC.10.

IC 4-4-10.9-16

"Maturity date"

Sec. 16. "Maturity date" when used in connection with the guaranty program means the date on which the mortgage or security agreement indebtedness, or lease obligations, would be extinguished if paid in accordance with periodic payments provided for in the mortgage, security agreement, or lease.

As added by P.L.20-1985, SEC.1.

IC 4-4-10.9-17

"Mortgage"

Sec. 17. "Mortgage" when used in connection with the guaranty program means a mortgage on an industrial development project, mining operation, or agricultural operation that involves the

processing of agricultural products, or the unpaid purchase price of real estate under the laws of this state, together with the credit instruments, if any, secured thereby, including but not limited to a financing agreement or a financing agreement within the meaning of IC 36-7-12 in connection with real property.

As added by P.L.20-1985, SEC.1.

IC 4-4-10.9-17.3

"Mortgage credit certificates"

Sec. 17.3. "Mortgage credit certificates" refers to mortgage credit certificates issued under Section 25 of the Internal Revenue Code of 1986, including any later amendments.

As added by P.L.24-1995, SEC.8.

IC 4-4-10.9-18

"Mortgage payments"

Sec. 18. "Mortgage payments" means periodic payments called for by the mortgage covering interest, installments of principal, taxes and assessments, mortgage insurance premiums, and hazard insurance premiums.

As added by P.L.20-1985, SEC.1.

IC 4-4-10.9-19

"Mortgagee"

Sec. 19. "Mortgagee" means the original lender under a mortgage and his successors and assigns approved by the authority and may include all insurance companies, trust companies, banks, investment companies, savings banks, executors, trustees, and other fiduciaries, including pensions and retirement funds.

As added by P.L.20-1985, SEC.1. Amended by P.L.11-1990, SEC.11.

IC 4-4-10.9-20

"Mortgagor"

Sec. 20. "Mortgagor" means the original borrower under a mortgage and his successors and assigns.

As added by P.L.20-1985, SEC.1.

IC 4-4-10.9-21

"Multiple project program"

Sec. 21. "Multiple project program" means, among other things, that program of the authority described under IC 4-4-11-18 pursuant to which it acquires from lenders loans made to developers, users, or both, for the financing of industrial development projects, the payment on such loans providing security for the repayment of bonds.

As added by P.L.20-1985, SEC.1. Amended by P.L.11-1990, SEC.12.

IC 4-4-10.9-22

"Person"

Sec. 22. "Person" means any individual, partnership, firm,

association, joint venture, limited liability company, or corporation.
As added by P.L.20-1985, SEC.1. Amended by P.L.8-1993, SEC.13.

IC 4-4-10.9-23

"Pollution"

Sec. 23. "Pollution" means all forms of environmental pollution, including water pollution, air pollution, sewage, solid and radioactive waste, thermal pollution, radiation contamination, and noise pollution.

As added by P.L.20-1985, SEC.1.

IC 4-4-10.9-24

"Pollution control facility"

Sec. 24. "Pollution control facility" means a facility for the abatement, reduction, or prevention of pollution or for the removal or treatment of any substances in materials being processed that otherwise would cause pollution when used. This includes the following:

- (1) Coal washing, coal cleaning, or coal preparation facilities designed to reduce the sulfur and ash levels of Indiana coal.
- (2) Coal-fired boiler facilities designed to reduce emissions while burning Indiana coal.
- (3) Pollution control equipment to allow for the environmentally sound use of Indiana coal.

As added by P.L.20-1985, SEC.1.

IC 4-4-10.9-25

"Sale contract"

Sec. 25. "Sale contract" when used in connection with the multiple project program means a contract providing for the sale of one (1) or more industrial development projects to one (1) or more contracting parties and includes a contract providing for payment of the purchase price in one (1) or more installments. If the sale contract permits title to the industrial development project to pass to the contracting party or parties prior to payment in full of the entire purchase price, it shall also provide for the contracting party or parties to deliver to the authority or to the trustee under the indenture pursuant to which the bonds were issued one (1) or more notes, debentures, or other secured or unsecured debt obligations of the contracting party or parties providing for timely payments, including, without limitation, interest thereon for the balance of the purchase price at or prior to the passage of title.

As added by P.L.20-1985, SEC.1. Amended by P.L.11-1990, SEC.13.

IC 4-4-10.9-26

"Security agreement"

Sec. 26. "Security agreement" when used in connection with the guaranty program means an agreement which creates or provides for security interest in equipment, including, but not limited to, an equipment lease under that program or within the meaning of

IC 36-7-12, and any successor provisions related to equipment.
As added by P.L.20-1985, SEC.1.

IC 4-4-10.9-27

"Single project program"

Sec. 27. "Single project program" means, among other things, that program of the authority described in IC 4-4-11-17 pursuant to which it issues bonds, the proceeds of which are used to finance an industrial development project or projects pursuant to a loan between the authority and the developer or user.

As added by P.L.20-1985, SEC.1. Amended by P.L.11-1990, SEC.14.

IC 4-4-10.9-27.3

"Taxable bonds"

Sec. 27.3. "Taxable bonds" means bonds, the interest on which will not be excluded from the gross income of the owners of the bonds under Section 103 of the Internal Revenue Code.

As added by P.L.25-1987, SEC.2.

IC 4-4-10.9-27.7

"Tax-exempt bonds"

Sec. 27.7. "Tax-exempt bonds" means bonds, the interest on which will be excluded from the gross income of the owners thereof under Section 103 of the Internal Revenue Code.

As added by P.L.25-1987, SEC.3.

IC 4-4-10.9-28

"User"

Sec. 28. "User" means a person who has entered into a financing agreement with the authority or lender or contract for use with the developer or lender in contemplation of its use of an industrial development project.

As added by P.L.20-1985, SEC.1. Amended by P.L.11-1990, SEC.15.